

SEALED

FILED

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CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA

BY _____ DEPUTY

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

-oOo-

UNITED STATES OF AMERICA,

Plaintiff,

v.

MANDIE L. ABELS,

Defendant.

Case No.: 2:12-CR-58-PMP-RJJ
SEALED
PLEA MEMORANDUM

The United States of America, by and through Daniel G. Bogden, United States Attorney, and Kathleen Bliss, Assistant United States Attorney, for the District of Nevada, and by and through Thomas E. Perez, Assistant Attorney General, and Patricia A. Sumner, Trial Attorney, for the Civil Rights Division of the Department of Justice; and MANDIE L. ABELS ("Defendant"), with her Counsel, Chad Bowers; submit this binding plea memorandum under

1 Federal Rules of Criminal Procedure 11(c)(1)(C).

2 **I.**

3 **PLEA AGREEMENT**

4 The United States and Defendant have reached the following plea agreement, which
5 is **binding** on the Court.

6 **A. The Plea**

7 Defendant will plead guilty to Count One of the Information, charging Conspiracy
8 to Murder, in violation of Title 18, United States Code, Section 1117. The parties agree that,
9 pursuant to Fed. R.Crim.P. 11(c)(1)(C), a sentence of 15 years imprisonment, followed by a five-
10 year term of supervised release and restitution, as ordered by the Court, is the appropriate
11 disposition of the case (hereinafter referred to as "Stipulated Sentence").

12 **B. Additional Charges**

13 The United States Attorney's Office for the District of Nevada and the Department
14 of Justice Civil Rights Division ("United States") will bring no additional charge or charges
15 against Defendant arising out of the investigation in the District of Nevada that culminated in this
16 Plea Memorandum.

17 **C. Sentencing Guideline Calculations**

18 1. Defendant understands that, although the parties agree to the Stipulated
19 Sentence, the Court is required to consider United States Sentencing Guidelines ("U.S.S.G." or
20 "Sentencing Guidelines") among other factors in determining Defendant's sentence and whether or
21 not to accept or reject the Stipulated Sentence. Defendant understands that the Sentencing
22 Guidelines are advisory, and that after considering the Sentencing Guidelines, the Court may
23 accept or reject the the Stipulated Sentence. Should the Court reject the Stipulated Sentence, this
24 Plea Agreement is null and void. Should the Court accept the Stipulated Sentence, the Court is
25 bound to impose a sentence of 15 years imprisonment, followed by a five-year term of supervised
26 release and restitution. The Stipulated Sentence, however, does not take into account any motion

1 by the United States filed under Fed.R.Crim.P. 35, nor does this Agreement preclude the United
2 States from filing such a motion if, in the government's sole discretion, such a motion is
3 appropriate at some point in time.

4 2. Relative to the applicable Sentencing Guidelines, if said Guidelines were to
5 apply, Defendant and the United States agree to the following factors under the U.S.S.G.:

6 **Count One**

7 a. The base offense level is 43. [U.S.S.G. § 2A1.5 cross-referencing U.S.S.G.
8 § 2A1.1].

9 b. Before any reduction for acceptance of responsibility, the adjusted base
10 offense level calculated by the parties for Count One is 43.

11 3. The Stipulated Sentence encompasses acceptance of responsibility by
12 Defendant. However, the United States reserves the right to withdraw from this Plea Agreement,
13 should Defendant violate any of the following provisions: Defendant (a) fails to make a complete
14 factual basis for the guilty plea at the time it is entered; (b) is untruthful with the Court or
15 probation officers; (c) denies involvement in the offense or provides conflicting statements
16 regarding Defendant's involvement; or (d) attempts to withdraw the guilty plea.

17 4. Defendant's Criminal History Category will be determined by the Court
18 under Chapter Four of the U.S.S.G.

19 5. The parties understand that the stipulated U.S.S.G. calculations are based on
20 information now known and could change upon investigation by the United States Probation
21 Office. It is possible that factors unknown or unforeseen by the parties to the Plea Agreement may
22 be considered in determining the offense level, specific offense characteristics, and other related
23 factors. In that event, Defendant will not withdraw Defendant's plea of guilty if the Court accepts
24 the Stipulated Sentence herein.

25 **D. Other Sentencing Matters**

26 1. The parties stipulate that no other guideline enhancements or reductions,

1 except those described herein, should apply in calculating the total advisory guideline offense
2 level.

3 2. The Defendant agrees that the Stipulated Sentence is a reasonable sentence
4 under the factors set forth in 18 U.S.C. § 3553(a).

5 4. Defendant agrees that the Court may consider any counts dismissed under
6 this agreement, along with all other relevant conduct whether charged or uncharged, in
7 determining whether or not to accept or reject this Plea Agreement.

8 **E. Fines and Special Assessment**

9 1. Defendant agrees that the Court may impose a fine due and payable
10 immediately upon sentencing.

11 2. Defendant will pay the special assessment of \$100 per count of conviction
12 at the time of sentencing.

13 **F. Restitution**

14 Defendant will make restitution in an amount to be determined by the Court, which
15 Defendant agrees may include relevant conduct. Defendant understands that any restitution
16 imposed by the Court may not be discharged in whole or in part in any present or future
17 bankruptcy proceeding.

18 **G. Waiver of Appeal**

19 In exchange for the concessions made by the United States in this Plea Agreement,
20 Defendant knowingly and expressly waives the right to appeal the Stipulated Sentence and further
21 waives the right to appeal the manner in which that sentence was determined on the grounds set
22 forth in Title 18, United States Code, Section 3742. Defendant waives the right to appeal any
23 other aspect of the conviction or sentence, including any order of restitution. Defendant also
24 waives all collateral challenges, including any claims under 28 U.S.C. § 2255, to her conviction,
25 sentence and the procedure by which the court adjudicated guilt and imposed sentence, except
26 non-waivable claims of ineffective assistance of counsel.

1 **H. Waiver of Statute of Limitations**

2 In exchange for the concessions made by the United States in this Plea Agreement,
3 Defendant knowingly and expressly waives any defense of statute of limitations to the charge of
4 Conspiracy to Murder (18 U.S.C. § 1117) as set forth in Count One of the Information. Defendant
5 also agrees that in the event that the Court rejects this Plea Agreement for any reason; or that
6 Defendant enters a guilty plea but later withdraws it; or that Defendant, after signing this Plea
7 Agreement, fails for any reason to enter a guilty plea, Defendant waives any defense of statute of
8 limitations to any charge the United States may bring against her. Defendant understands this right
9 and waives it knowingly, voluntarily, and intelligently.

10 **I. Additional Promises, Agreements, and Conditions**

11 1. In exchange for the United States entering into this agreement, Defendant
12 agrees that (a) the facts set forth in Section IV of this Plea Agreement shall be admissible against
13 Defendant under Fed.R.Evid. 801(d)(2)(A) in the following circumstances: (1) for any purpose at
14 sentencing; and (2) in any subsequent proceeding, including a trial in the event Defendant does not
15 plead guilty or withdraws Defendant's guilty plea, to impeach or rebut any evidence, argument or
16 representation offered by or on Defendant's behalf; and (b) Defendant expressly waives any and all
17 rights under Fed.R.Crim.P. 11(f) and Fed. R. Evid. 410 with regard to the facts set forth in Section
18 IV of the Plea Agreement to the extent set forth above.

19 2. The parties agree that no promises, agreements, and conditions have been
20 entered into other than those set forth in this Plea Agreement, and none will be entered into unless
21 in writing and signed by all parties.

22 **J. Limitations**

23 This Plea Agreement is limited to the United States Attorney's Office for the
24 District of Nevada and the Civil Rights Division of the Department of Justice and cannot bind any
25 other federal, state or local prosecuting, administrative, or regulatory authority. However, this Plea
26 Memorandum does not prohibit the United States through any agency thereof, the United States

1 Attorney's office for the District of Nevada, or any third party from initiating or prosecuting any
2 civil proceeding directly or indirectly involving Defendant, including but not limited to,
3 proceedings under the False Claims Act relating to potential civil monetary liability or by the
4 Internal Revenue Service relating to potential tax liability.

5 **K. Cooperation**

6 1. Defendant agrees, if requested by the United States, to provide complete and
7 truthful information and testimony concerning her knowledge of all other persons who are
8 committing or have committed offenses against the United States, and agrees to cooperate fully
9 with the United States in the investigation and prosecution of such persons. Defendant agrees that
10 the information she provides can be used against her to establish relevant conduct. Defendant
11 understands that her cooperation is based on the following terms and conditions:

12 (a) Defendant shall cooperate truthfully, completely and forthrightly
13 with the United States Attorney's Office for the District of Nevada (this Office) and other Federal,
14 state and local law enforcement authorities identified by this Office in any matter as to which the
15 United States deems the cooperation relevant.

16 (b) Defendant shall promptly turn over to the United States or other law
17 enforcement authorities or direct such law enforcement authorities to any and all evidence of
18 crime, all contraband and proceeds of crime, and all assets traceable to such proceeds of crime;
19 any and all of which may be subject to forfeiture under relevant statutes, and Defendant shall not
20 file a claim in any such forfeiture action.

21 (c) Defendant shall submit a full and complete accounting of all her
22 financial assets, whether such assets are in her name or in the name of a third party.

23 (d) Defendant shall testify fully and truthfully before any Grand Jury in
24 the District of Nevada, and elsewhere, and at all trials of cases or other Court proceedings in the
25 District of Nevada and elsewhere, at which her testimony may be deemed relevant by the United
26 States.

1 (e) Defendant agrees not to commit any criminal violation of local, state
2 or federal law during the period of her cooperation with law enforcement authorities pursuant to
3 this Agreement or at any time prior to the sentencing in this case. The commission of a criminal
4 offense during the period of her cooperation or at any time prior to sentencing will constitute a
5 breach of this Plea Agreement and will relieve the United States of all of its obligations under this
6 agreement. However, Defendant acknowledges and agrees that such a breach of this Agreement
7 will not entitle her to withdraw her plea of guilty. Defendant further understands that, to establish
8 a breach of this agreement, the United States need only prove Defendant's commission of a
9 criminal offense by a preponderance of the evidence.

10 2. Defendant acknowledges and understands that during the course of the
11 cooperation outlined in this agreement Defendant will be interviewed by law enforcement agents
12 and/or United States attorneys and that Defendant has the right to have defense counsel present
13 during these interviews. However, after consultation with counsel, and with counsel's
14 concurrence, Defendant hereby knowingly and voluntarily waives this right and agrees to meet
15 with law enforcement agents and United States prosecutors outside of the presence of counsel. If
16 at some future point counsel or Defendant desires to have counsel present during interviews by law
17 enforcement agents and/or United States attorneys, the United States will honor such request, and
18 this change will have no effect on any other terms and conditions of this Agreement.

19 3. Defendant knowingly and voluntarily waives or gives up all of Defendant's
20 constitutional and statutory rights to a speedy trial and speedy sentence, and agrees that the plea of
21 guilty pursuant to this agreement will be entered at a time decided upon by the United States with
22 the concurrence of the Court. Defendant also agrees that the sentencing in this case may be
23 delayed until Defendant's cooperation has been completed, as determined by the United States, so
24 that the Court will have the benefit of all relevant information before a sentence is imposed.
25 Defendant understands that the date for sentencing will be set by the Court.
26

1 4. Defendant understands that if the Court accepts this binding Plea Agreement
2 her sentence will be 15 years imprisonment, followed by a term of five years supervised release
3 and restitution. In the event the United States decides in its sole discretion that the assistance
4 provided by Defendant justifies a motion for reduction of sentence under Rule 35 of the Federal
5 Rules of Criminal Procedure, the United States will file a motion with the Court to allow the Court
6 to consider a reduction of Defendant's sentence below 15 years imprisonment. Defendant further
7 understands that if the United States files a motion for reduction of sentence, the sentence to be
8 imposed in such instance is a matter solely within the discretion of the Court. Defendant
9 acknowledges that the Court is not obligated to follow any recommendation of the United States at
10 the time of sentencing or to reduce Defendant's sentence based on Defendant's substantial
11 assistance to the United States, even if the United States files a motion pursuant to Rule 35 of the
12 Federal Rules of Criminal Procedure.

13 5. In addition, Defendant acknowledges that the United States is not obligated
14 to file any motion in this case for a reduction of sentence pursuant to Rule 35 of the Federal Rules
15 of Criminal Procedure. Defendant understands that even if this Office files a motion under Rule 35
16 and informs the Court of Defendant's cooperation, substantial or otherwise, this Office reserves its
17 full right of allocution for purposes of sentencing in this matter. In particular, the United States
18 reserves its right to recommend a specific period of incarceration and fine up to the maximum
19 sentence of incarceration and fine permitted by the terms of this Plea Agreement. Defendant
20 further understands that the United States retains its full right of allocution in connection with any
21 post-sentence motion which may be filed in this matter and/or any proceeding(s) before the Bureau
22 of Prisons.

23 6. Defendant understands and agrees that Defendant will not be allowed to
24 withdraw the guilty plea entered under this agreement solely because of the harshness of the
25 sentence imposed. Such a motion to withdraw shall constitute a breach of this agreement.
26

1 7. In the event the United States decides in its sole discretion that the
2 assistance provided by Defendant justifies a motion for reduction of sentence under Rule 35 of the
3 Federal Rules of Criminal Procedure, the United States will file a motion with the Court to allow
4 the Court to consider a reduction of defendant's sentence below 15 years imprisonment.

5 8. It is understood and agreed that a motion for reduction of sentence shall not
6 be made under any circumstances unless Defendant's cooperation is deemed to be substantial
7 assistance by the United States. The United States has made no promise, implied or otherwise,
8 that the United States will file a motion for reduction of Defendant's sentence. Further, no
9 promise has been made that a motion will be made for reduction of sentence even if Defendant
10 complies with all of the terms of this Plea Agreement in all respects but has been unable to provide
11 substantial assistance as determined in the sole discretion of the United States.

12 9. The United States agrees to consider the totality of the circumstances,
13 including but not limited to the following factors, in determining whether, in the sole discretion of
14 the United States, Defendant has provided substantial assistance that would merit a motion by the
15 United States for a reduction of sentence:

16 (a) The United States' evaluation of the significance and usefulness of
17 Defendant's assistance;

18 (b) The truthfulness, completeness, and reliability of any information or
19 testimony provided by Defendant;

20 (c) The nature and extent of Defendant's assistance;

21 (d) Any injury suffered, or any danger or risk of injury to Defendant or
22 Defendant's family resulting from Defendant's assistance; and

23 (e) The timeliness of Defendant's assistance.

24 10. It is understood and agreed that in the event a motion for reduction of
25 sentence is made by the United States based upon Defendant's perceived substantial assistance, the
26 United States reserves the right to make a specific recommendation to the Court regarding the

1 extent of the reduction of sentence for substantial assistance; however, the final decision as to how
2 much, if any, reduction in sentence is warranted because of that assistance rests solely with the
3 Court. Defendant specifically acknowledges that she has been advised that in any event, the
4 United States will not recommend probation, but will in fact recommend a prison term.

5
6 **II.**

7 **PENALTY**

8 1. The maximum penalty for violating Title 18, United States Code, Section
9 1117, is life imprisonment, a fine of not more than \$250,000, or both. In addition, Defendant is
10 subject to supervised release for a term not exceeding five years.

11 2. Supervised release is a period of time following imprisonment during which
12 Defendant will be subject to various restrictions and requirements. Defendant understands that if
13 Defendant violates one or more of the conditions of any supervised release imposed, Defendant
14 may be returned to prison for all or part of the term of supervised release, which could result in
15 Defendant serving a term of life imprisonment.

16 3. Defendant must pay a special assessment of \$100 for each count of
17 conviction.

18 4. Defendant is required to pay for the costs of imprisonment, probation, and
19 supervised release, unless Defendant establishes that Defendant does not have the ability to pay
20 such costs, in which case the Court may impose an alternative sanction such as community service.

21
22 **III.**

23 **ELEMENTS**

24 1. To convict Defendant of Conspiracy to Murder, Title 18, United States
25 Code, Section 1117, the United States must prove each of the following elements beyond a
26 reasonable doubt:

1 First, Defendant agreed with one or more other persons to violate 18 U.S.C. Section
2 1111;

3 Second, Defendant joined the conspiracy knowing its purpose was to murder at
4 least one person with malice aforethought, in a specific location, which was
5 federally-owned land, within the special maritime and territorial jurisdiction of the
6 United States; and she joined the conspiracy intending to help accomplish this
7 purpose; and

8 Third, during the conspiracy, Defendant or one of her co-conspirators performed an
9 act in furtherance of the conspiracy.

10
11 **IV.**

12 **FACTS THAT SUPPORT GUILTY PLEA**

13 1. Defendant is pleading guilty because Defendant is guilty of the charged
14 offense.

15 2. In pleading guilty to the offense, Defendant acknowledges that if Defendant
16 elected to go to trial instead of entering this plea, the United States could prove facts sufficient to
17 establish Defendant's guilt beyond a reasonable doubt.

18 3. Defendant specifically admits and declares under penalty of perjury that all
19 of the facts set forth below are true and correct:

20 4. Shortly before July 4, 1998, Defendant was asked by a co-conspirator
21 (hereinafter "Co-conspirator A") to go with another female known to Defendant (hereinafter "Co-
22 conspirator F") to the piercing shop where Lin Newborn worked and flirt with Newborn. Co-
23 conspirator A also asked Defendant and Co-conspirator F to invite Newborn to socialize with the
24 women in a location in the desert on a specific day and time, which was a day or two after the
25 women went to the piercing shop. Co-conspirator A told Defendant that he and several others
26 were going to be waiting with guns at the desert location and were planning to shoot and kill

1 Newborn. Defendant agreed to go with Co-conspirator F to the piercing shop and invite Newborn
2 to socialize with the women in the desert.

3 5. Shortly before July 4, 1998, Defendant went with Co-conspirator F to the
4 piercing shop where Newborn was working. Defendant and Co-conspirator F talked to Newborn
5 and invited him to socialize with the women in the desert at some point in the near future. Daniel
6 Shersty, a friend of Newborn who was also at the piercing shop, was invited to socialize with the
7 women and Newborn at a party spot in the desert. On July 3, 1998, Defendant and Co-conspirator
8 F contacted Newborn and Shersty to determine if they were still interested in socializing.
9 Defendant and Co-conspirator F confirmed with Newborn and Shersty a plan to meet late in the
10 evening on July 3, 1998. Defendant and Co-conspirator F met with Newborn and Shersty at a pre-
11 determined location and time. Newborn and Shersty followed the women in a separate car.
12 Shortly after arriving at the desert location, Co-conspirator A and several other co-conspirators
13 shot and killed Newborn and Shersty.

14 6. Defendant acknowledges that the United States could prove beyond a
15 reasonable doubt that the murders of Newborn and Shersty occurred on land within the special
16 maritime jurisdiction of the United States. All of the events described above took place in the
17 State and Federal District of Nevada.

18 7. Both the United States and Defendant agree that this section of the Plea
19 Agreement (Section IV) does not contain all of the relevant information known to Defendant. The
20 parties also agree that the facts contained in Section IV provide a sufficient factual basis for the
21 crime to which Defendant is pleading guilty, but the facts contained in Section IV are not an
22 exhaustive statement by Defendant.

23 V.

24 ACKNOWLEDGMENT

25 1. Defendant, acknowledges by Defendant's signature below that Defendant has
26 read this Memorandum of Plea Agreement, that Defendant understands the terms and conditions, and
the factual basis set forth herein, that Defendant has discussed these matters with Defendant's

1 attorney, and that the matters set forth in this memorandum, including the facts set forth in Section
2 IV above are true and correct.

3 2. Defendant acknowledges that Defendant has been advised, and understands,
4 that by entering a plea of guilty Defendant is waiving, that is, giving up, certain rights guaranteed to
5 Defendant by law and by the Constitution of the United States. Specifically, Defendant is giving up:

- 6 a. The right to be indicted by a federal grand jury;
7 b. The right to proceed to trial by jury on the original charges, or to a trial
8 by a judge if Defendant and the United States both agree;
9 c. The right to confront the witnesses against Defendant at such a trial,
10 and to cross-examine them;
11 d. The right to remain silent at such trial, with such silence not to be used
12 against Defendant in any way;
13 e. The right, should Defendant so choose, to testify in Defendant's own
14 behalf at such a trial;
15 f. The right to compel witnesses to appear at such a trial, and to testify in
16 Defendant's behalf; and
17 g. The right to have the assistance of an attorney at all stages of such
18 proceedings.

19 3. Defendant, Defendant's attorney, and the attorneys for the United States
20 acknowledge that this Plea Memorandum contains the entire agreement negotiated and agreed to by
21 and between the parties, and that no other promise has been made or implied by either Defendant,
22 Defendant's attorney, or the attorneys for the United States.


23
24
25 2/21/12
26 DATED

DANIEL G. BOGDEN
United States Attorney


KATHLEEN BLISS
Assistant United States Attorney

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division


2/21/12
DATED


PATRICIA A. SUMNER
Trial Attorney

2/21/12
DATED


CHAD BOWERS
Defense Counsel for Mandie Abels

2/21/12
DATED


MANDIE L. ABELS
Defendant